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Workman Nydegger 1000 Eagle Gate Tower 60 East South Temple Salt Lake City, UT 84111			EXAMINER LONSDERRY, HUNTER B	
			ART UNIT 2421	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

09/986,662

## Applicant(s)

ROBBINS, THOMAS DEAN

## Examiner

Hunter B. Lonsberry

## Art Unit

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 11-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claim 14-16 have been considered but are moot in view of the new ground(s) of rejection.

Applicant appears to have amended claim 14 to include similar language as the other independent claims. A 103 rejection of Proehl in view Harrison for claims 14-16 has now been included.

Applicant's arguments filed 4/22/09 have been fully considered but they are not persuasive.

Applicant argues that Proehl in combination with Harrison fails to teach "activating the receiver during the second time period to extract and store the ID code, and automatically tuning the receiver to a second channel after the first period if the stored ID code is detected on the second channel." In Proehl the information is stored response to a user pressing a button during a commercial to remind the user to change the channel exclusively on a time and date contained in the program information. In Harrison the predetermined match criteria are manually entered and not extracted and stored. Harrison also fails to disclose "automatically tuning the receiver to a second channel after a first period if the stored ID code is detected on the second channel (Pages 9-10)

The Examiner respectfully disagrees. Proehl teaches that the ID code is not limited to merely start time a channel. "The program identification may also

be determined also by pattern as character recognition of the signal or portion of the signal, e.g. head or trailer, as received." (Paragraph 31). Further Proehl may automatically tune to a program with no reminder notification to the user by pre-selecting a menu option (paragraphs 33, 36). While Proehl may utilize some sort of pattern or character recognition to determine a program, along with, or instead of merely storing a program title or ID code, there is no explicit teaching that the system of Proehl actively searches other channels to find another occurrence of the same identified information.

Harrison discloses a receiver with an analyzing unit 250 which monitors a plurality of channels for stored predefined items of interest to a user, including text, numbers, graphic images, URLs (column 3, lines 46-column 4, line 2) when a channel which contains the ID code corresponding to a predefined item is found, the channel is changed from the current channel to the new channel containing the item (column 4, lines 18-57). Video snapshots can be compared to determine a match for an alternate program (figure 4c, column 6, lines 33-40).

The combination of Proehl with Harrison would result in a system which employs pattern recognition to determine programming that a user desires to watch at a later time by utilizing the program identification teachings of Proehl and employing the search teachings of Harrison. This would lead to additional advantages by enabling a user to find instances of programming on nearly any channel. Likewise it would provide additional utility by utilizing Harrison's

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teachings of setting priority for different tuning requests before preempting different programming (column 5, lines 11-34).

Applicant argues that there is not motivation to combine Proehl and Harrison as one the Program information of Proehl is extracted there is no further reason to monitor the television channels as Proehl as a simple timer or calendar is sufficient. There is no teaching, suggestion or motivation to introduce the computational complexity and multi channel tuner of Harrison into Proehl in order to tune to a selected program in as much as it would be very expensive and the desired channel and time is already known. In Harrison the activate monitoring is based on real time evaluation of currently broadcast signals, it is not apparent from either of these references how a system for extracting future scheduling data, as Proehl could or should be combined with the system of Harrison absent hindsight based on Applicant's own disclosure.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Proehl provides teachings of setting reminders or record requests for various programs in a convenient way along with utilizing pattern recognition as well as timer/calendar functionality to record programming, but is silent regarding any conflict resolution. As discussed above, Harrison discloses a receiver with an analyzing unit 250 which monitors a plurality of channels for stored predefined items of interest to a user, including text, numbers, graphic images, URLs (column 3, lines 46-column 4, line 2) when a channel which contains the ID code corresponding to a predefined item is found, the channel is changed from the current channel to the new channel containing the item (column 4, lines 18-57). Video snapshots can be compared to determine a match for an alternate program (figure 4c, column 6, lines 33-40).

The combination of Proehl with Harrison would result in a system which employs pattern recognition to determine programming that a user desires to watch at a later time by utilizing the program identification teachings of Proehl and employing the search teachings of Harrison. This would lead to additional advantages by enabling a user to find instances of programming on nearly any

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channel. Likewise it would provide additional utility by utilizing Harrison's teachings of setting priority for different tuning requests before preempting different programming (column 5, lines 11-34).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, and 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0131356 A1 to Proehl in view of US 5,878,222 To Harrison.

Regarding claim 1, Proehl discloses a method of programming a television receiver, the receiver operable to receive a plurality of television channels, the receiver comprising an automatic tuner, the automatic tuner being operable to automatically tune the receiver to a particular channel, the particular channel corresponding to an ID code, said method (figure 6/7) comprising: receiving a first broadcast television program with the receiver (figure 7, step 710b), the first broadcast television program being received on a first channel during a first time period (paragraphs 30-31/33, a user is watching an commercial or an upcoming program, an );

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receiving a commercial (paragraphs 30-31,33) corresponding to a second television program with the receiver, the commercial being received on the first channel during a second time period, the second time period being within the first time period (paragraphs 30-31,33 the advertisement is for an upcoming program);

receiving the ID code with the receiver, the ID code being received on the first channel during the second time period (30-34, pattern recognition, program information regarding the future program including timing and channel info or title or other code data is retrieved and stored);

If a user instruction is received during the second time period activating the receiver during the second time period to extract and store the ID code (30-34, pattern recognition, program information regarding the future program including timing and channel info or title or other code data is retrieved and stored);

and automatically tuning the receiver to a second channel after the first period (paragraph 36, a reminder or automatic tuning is utilized).

Proehl fails to disclose automatically tuning to a second channel if the ID code is detected on the second channel out of a plurality of second channels.

Harrison discloses a receiver with an analyzing unit 250 which monitors a plurality of channels for stored predefined items of interest to a user, including text, numbers, graphic images, URLs (column 3, lines 46-column 4, line 2) when a channel which contains the ID code corresponding to a predefined item is found, the channel is changed from the current channel to the new channel



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containing the item (column 4, lines 18-57). Video snapshots can be compared to determine a match for an alternate program (figure 4c, column 6, lines 33-40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify Proehl to utilize the automatic monitoring features as taught by Harrison, for the advantages of readily finding programming of interest, or keeping updated for the latest news or sports scores (column 5, lines 22-53).

Regarding claim 2, Proehl discloses ID codes which include programming ID codes and capture ID codes (30-34). Bait ID codes

Harrison also teaches capture ID/repeating ID codes (figure 3b, column 5, lines 11-53), bait ID codes (column 4, lines 40-57, triggers may be ignored so that channels aren't constantly changed)

Regarding claims 3, Proehl teaches a profile command which includes information on which channel to tune to, the start time and for how long (paragraphs 30-34).

Harrison is relied upon to teach 6 types of programming ID codes (figure 3b).

Regarding claim 4, Proehl discloses transmitting ID codes.

Wilkins fails to teach the differentiating portion of the ID code being 2 bits.

The examiner takes official notice that 2 bit fields are notoriously well known in the art.

Therefore it would have been obvious to modify Proehl to use a 2bit differentiation in view of KSR.

Regarding claim 11, see claim 1.

Regarding claims 12-13, Proehl discloses an availability indicator during the second period (figure 9) and that the remote control transmits a signal in response to a user button press (paragraph 25).

Regarding claim 14, Proehl discloses a method of programming a television receiver, the receiver operable to receive a plurality of television channels, the receiver comprising an automatic tuner, the automatic tuner being operable to automatically tune the receiver to a particular channel, the particular channel corresponding to an ID code, said method (figure 6/7) comprising: receiving a first broadcast television program with the receiver (figure 7, step 710b), the first broadcast television program being received on a first channel during a first time period (paragraphs 30-31/33, a user is watching an commercial or an upcoming program, an ); receiving a commercial (paragraphs 30-31,33) corresponding to a second television program with the receiver, the commercial being received on the first channel during a second time period, the second time period being within the first

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time period (paragraphs 30-31,33 the advertisement is for an upcoming program);

receiving the ID code with the receiver, the ID code being received on the first channel during the second time period (30-34, pattern recognition, program information regarding the future program including timing and channel info or title or other code data is retrieved and stored);

If a user instruction is received during the second time period activating the receiver during the second time period to extract and store the ID code (30-34, pattern recognition, program information regarding the future program including timing and channel info or title or other code data is retrieved and stored);

and automatically tuning the receiver to a second channel after the first period (paragraph 36, a reminder or automatic tuning is utilized).

Harrison discloses a receiver with an analyzing unit 250 which monitors a plurality of channels for stored predefined items of interest to a user, including text, numbers, graphic images, URLs (column 3, lines 46-column 4, line 2) when a channel which contains the ID code corresponding to a predefined item is found, the channel is changed from the current channel to the new channel containing the item (column 4, lines 18-57). Video snapshots can be compared to determine a match for an alternate program (figure 4c, column 6, lines 33-40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify Proehl to utilize the automatic monitoring features as taught by Harrison, for the advantages of readily finding programming of

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interest, or keeping updated for the latest news or sports scores (column 5, lines 22-53) and setting priority for different tuning requests before preempting different programming (column 5, lines 11-34).

Regarding claims 15-16, Proehl discloses an availability indicator during the second period (figure 9) and that the remote control transmits a signal in response to a user button press (paragraph 25).

Claim 17 is met by claims 1 and 2.

Claims 18-20 are met by claim 1.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

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the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hunter B. Lonsberry whose telephone number is (571)272-7298. The examiner can normally be reached on Monday-Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hunter B. Lonsberry/  
Primary Examiner  
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HBL